

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

Respondent.

Disciplinary Proceeding  
No. C02040044

Hearing Officer – AWH

**ORDER DENYING MOTION FOR LIST OF DOCUMENTS WITHHELD**

On March 15, 2005, Respondent requested an order requiring the Department of Enforcement to submit to the Hearing Officer a list of documents withheld as privileged from production pursuant to Procedural Rule 9251(b). That Rule provides, inter alia, that Enforcement may withhold a document that is privileged or constitutes attorney work product, and does not contain material exculpatory evidence. On March 29, 2005, Enforcement filed its Opposition to the motion, asserting that it has produced almost 5,000 pages of documents in full satisfaction of its obligation to produce all relevant and non-privileged documents in its possession.

Procedural Rule 9251(c) authorizes the Hearing Officer to require Enforcement to submit a list of documents withheld, or any document withheld. Upon review, the Hearing Officer may make the list or document available to other parties for inspection and copying. However, the Rule requires that any motion to require production of a list of withheld documents be based on some reason to believe that a document is being withheld in violation of the Code of Procedure.

**This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-10 (C02040044).**

Here, Respondent concedes that he "cannot determine whether a Document withheld is being withheld in violation of the Code, unless we know what is being withheld and the reasons therefor." Furthermore, the motion provides no reason to believe that any document is being withheld in violation of the Code. Finally, Enforcement's Opposition to the motion includes an affidavit from its attorney stating that (1) he reviewed the documents produced to ensure compliance with Rule 9251(a)(1) [the documents required to be produced], and (2) he reviewed the documents withheld from production and found that none contained "material exculpatory evidence."

Accordingly, because there is no reason to believe that any document is being withheld in violation of the Code of Procedure, Respondent's motion is *denied*.

**SO ORDERED.**

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Alan W. Heifetz  
Hearing Officer

Dated: March 30, 2005